

IN THE MICHIGAN COURT OF APPEALS

ORDER

Re: **Remy Inc v HCSPay LLC**

Docket No. **284061**

L.C. No. **2006-071767-CK**

Christopher M. Murray, Chief Judge Pro Tem, acting under MCR 7.203(F)(1) and 7.216(A)(10), orders:

The claim of appeal from the February 15, 2008 stipulated judgment and the cross-appeal are DISMISSED for lack of jurisdiction.

This Court is empowered by MCR 7.203(A)(1) and MCL 600.308 to accept appeals of right filed by parties who are aggrieved by a final order of the court of claims or the circuit court. The initial final order for a case is defined by MCR 7.202(6)(a)(i) as the first judgment or order that disposes of all the claims and adjudicates the rights and liabilities of all the parties. When the parties to an action enter into a stipulation to dismiss a portion of a case without prejudice so they may claim an appeal from another order, however, the resulting orders cannot be considered final under this definition because the parties are not barred from resurrecting claims on that docket at some future date. *City of Detroit v State of Michigan*, 262 Mich App 542, 545; 686 NW2d 514 (2004), citing *Wickings v Arctic Enterprises, Inc*, 244 Mich App 125, 134-136; 624 NW2d 197 (2000). See also *Yeo v State Farm Fire & Casualty Ins Co*, 242 Mich App 483,484; 618 NW2d 916 (2000) (a dismissal without prejudice is not an adjudication on the merits).

Because the Oakland Circuit Court entered an order that dismissed plaintiff's claims against defendants Hennessey Capital Solutions, Inc., HCSPay, L.C.C., SurGen L.L.C., Charles G. Gagne, and Thomas Cross without prejudice on the same day that it entered a judgment against appellants, no final order exists from which the parties may claim an appeal or cross-appeal. Cf. *Bowie v Arder*, 441 Mich 23, 56; 490 NW2d 568 (1992) (the jurisdiction of this Court arises by law, not by the consent of the parties to matter below). Because this Court lacks jurisdiction over the appeal, it lacks jurisdiction over the cross-appeal as well. MCR 7.207(A)(1).



A true copy entered and certified by Sandra Schultz Mengel, Chief Clerk, on

MAY - 1 2008

Date

Sandra Schultz Mengel
Chief Clerk